

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HERBERT L. BARTON, JR.,

2:11-CV-2098 JCM (RJJ)

Plaintiff,

V.

FREMONT STREET EXPERIENCE,

Defendant.

ORDER

15 Presently before the court are the report and recommendation of Magistrate Judge Johnston.
16 (Doc. #7). *Pro se* plaintiff Herman L. Barton, Jr. filed an objection. (Doc. #8).

17 Plaintiff filed a motion for leave to proceed in forma pauperis on December 28, 2011. (Doc. 18 #1). The magistrate judge entered an order on January 18, 2012, scheduling a hearing on the motion 19 to proceed in forma pauperis. (Doc. #2). The order was served by regular first class mail via the 20 United States Postal Service, but the order was returned by the United States Postal Service marked 21 "return to sender unclaimed unable to forward." (Doc. #3).

22 Plaintiff then failed to appear at the hearing for his motion to proceed in forma pauperis.
23 Therefore, the magistrate judge scheduled an order to show cause hearing for April 11, 2012. (Doc.
24 #4). Again, the show cause order was returned to the court by the United States Postal Service as
25 undeliverable. (Doc. #6). Further, plaintiff failed to appear at the order to show cause hearing.
26 (Doc. #7).

27 The magistrate judge recommends that this case be dismissed with prejudice because

1 plaintiff: (1) has failed to keep the court apprised of his current address, (2) has taken no action in
2 this case since his initial filing on December 28, 2011, and (3) has had no contact with the court
3 since his initial filing. (Doc. #7).

4 Plaintiff filed an objection to the report and recommendation on June 7, 2012. (Doc. #8).
5 Plaintiff asserts that he did not receive notice of the hearing dates because he was arrested by Las
6 Vegas Metropolitan Police on February 20, 2012. Plaintiff alleges that he was not able to send a
7 forwarding address to the United States Postal Service until February 26, 2012, and did not receive
8 any forwarded mail until April 3, 2012. (Doc. #8). Therefore, plaintiff asks the court not to affirm
9 the magistrate judge's report and recommendation.

10 For the purposes of this report and recommendation, the court accepts plaintiff's
11 representations that he was arrested on February 20, 2012, and, therefore, unable to receive mail or
12 attend the hearings before the magistrate judge. Thus, it is inappropriate to dismiss plaintiff's case
13 at this time. However, plaintiff is warned that future failure to comply with court orders, timely
14 prosecute this case, or provide the court with a current address may result in sanctions, including
15 dismissal of the case.

16 Accordingly,

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the objections of plaintiff
18 (doc. #7) be, and the same hereby are, GRANTED.

19 DATED June 28, 2012.

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UNITED STATES DISTRICT JUDGE
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